

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

C.R. No. 8342 of 2014 (O & M)

Date of decision: 03.05.2017

Amarjit Singh

....Petitioner(s)

Versus

Gurdwara Shri Ber Sahib

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA**

Present: Mr. Rakesh Kumar, Advocate,  
for the petitioner.

**G.S.SANDHAWALIA, J. (Oral)**

The present judgment shall dispose of four civil revision petitions i.e. C.R. Nos. 8342 to 8345 of 2014 as common questions of law and facts are involved in all the petitions. For reference, ***C.R. No. 8342 of 2014, Amarjit Singh vs. Gurdwara Shri Ber Sahib*** is being taken up.

The present revision petitions are directed against the order of eviction dated 09.03.2012 passed by the Rent Controller, Kapurthala on the ground of non-payment of arrears of rent regarding two shops situated in the respondent-Gurdwara. Since eviction had been declined on the other grounds of bona fide requirement and unfit and unsafe, the cross objections were filed by the respondent-landlord against the said finding which have now been allowed by the Appellate Authority, Kapurthala on 17.03.2014 and eviction has also been ordered on the ground that the shops are unfit and unsafe for human habitation and on the ground of personal necessity and bona fide requirement also.

The case of the respondent-landlord was that the shop in

question had been taken at ₹170/- per month from 01.01.1996 and the tenant was in arrears of rent alongwith house tax and fire cess from 01.01.1999. The premises were part and parcel of the building which was earlier used as double storey building and there was one *chaubara* over the adjoining shop on the eastern side which had already fallen down on account of its wear and tear. The building had become unfit and unsafe and the entire building had already outlived its life. A large number of cracks had appeared in the walls and the foundation of the building had gone out of plumb. The same required reconstruction from the foundation level which could not be carried out without the ejectment of the respondent.

The bona fide requirement was set up on the ground that devotees used to visit the Gurdwara and would stay over-night and reconstruction of the building was to be done and the commercial complex on the ground floor with the residential premises including Langar (free kitchen) on the first floor of the building was to be made. The need was held out to be genuine and bona fide. The previous owner had donated the building for religious purposes. Resultantly, eviction was sought.

The stand of the petitioner was that the petitioner's father had been inducted as a tenant in the shop in dispute since 1972 where he was running a business of tailor. Later in the year 1982, the petitioner had taken another adjoining shop from the landlord as a tenant and they were having a common wall. He had been running the work of electrical repair since 1982-83 and the father used to pay the rent of both the shops to Baba Nazir Singh. On change of the Gurudwara Committee in 1996, the threat was raised that they should vacate the premises and they had approached the Civil Court which had granted injunction in their favour. It was admitted

that the common wall between the two shops was removed with the consent of Baba Nazir Singh and necessary repairs had been effected and the Committee had never paid any expenses. Baba Nazir Singh had died in 2001-02 and the petitioner had intended to pay the rent but the Committee did not receive the same. The bonafides were questioned that there was sufficient place at village Sidhwan Dona and Sultanpur Lodhi for the purposes of running *Langar* and the site plan was not in accordance with actual and factual position at the spot. Resultantly, the following issues were framed:-

1. *Whether the respondent is in arrears of rent? OPP*
2. *Whether premises in dispute has become unfit and unsafe for human habitation? OPP*
3. *Whether the petitioner needs demised premises for personal use and occupation? OPP*
4. *Whether the respondent is liable to be evicted from the demised premises on any of the abovesaid ground? OPP*
5. *Whether the petition is not maintainable? OPR*
6. *Whether the petitioner has no locus-standi to file the ejectment petition? OPR*
7. *Whether the ejectment petition is barred by principle of resjudicata? OPR*
8. *Whether the site plan filed by the petitioner with the ejectment petition is not correct? If so, its effect? OPR*
9. *Relief.”*

In respect of the ground of ejectment that the building was unfit and unsafe as per issue no. 2, Shri R.S. Bawa, Architect was examined and he furnished his report and site plan as Exs. P-4 and P-5 respectively.

A perusal of the order of the Rent Controller would go on to

show that the Rent Controller abdicated its responsibility to discuss the report at all and, thus, it is in such circumstances the Appellate Authority was constrained to take the same into consideration. It has been noticed that the inspection made was after the permission of the Court and the floor level of the shop was lower than the roof level of the other shop and rainy water had deteriorated the bricks in the wall. Two wooden battens were sagging down from the centre and they were very dangerous and could fall down any time. The whole load of the roof was resting on the wall and the load was not coming on the foundations directly and it was very dangerous and could cause heavy damage to human life. The brick tiles were lying up and down and the bricks had been washed away by water and accordingly, the premises were stated to be unfit and unsafe.

The Appellate Authority accordingly examined the photographs Ex.P-6 to P-66 apart from Ex.P-7 to P-9 and P-20. Similarly, the statement of the petitioner whereby he had admitted that the shop in dispute was in dilapidated condition was taken into consideration and that the fact that repair had been carried out of the walls of the shop but not of the roof. The report of the expert namely Charanjit Singh Bhasin examined by the present petitioner was rightly rejected on the ground that he had not even checked the foundation of the premises nor he could tell the depth thereof by approximation and nor the age of the premises. He did not even notice any sign of removal of the intervening wall of the two shops and resultantly his evidence was rejected as not being of that an expert who had not even decided the age of the building. He could not tell the age by approximation and the fact that it was an independent part of the building or part of the big building.

The reasoning, thus, which has been given by the Appellate Court is apparently very valid and being the final Court of fact has rightly gone into the evidence on record which the Rent Controller did not do so and, thus, rightly allowed the cross objections on the ground of shop being unfit and unsafe. Similarly, it is to be noticed that the issue of premises being required for personal use and occupation, as noticed, was that the Gurdwara required the premises for further expansion. The premises, as noticed, were taken way back in the year 1972 of one portion and another portion in the year 1982. A period of half a decade has gone by and much water has flown under the bridge. The need of the Gurdwara for expansion of the premises for its devotees and for raising further construction in place of the building which is in dilapidated condition is, thus, genuine.

The basic principle that the landlord is the best judge as to how to use the property in question has, thus, been kept in mind by the Appellate Authority while ordering eviction and allowing the cross objections. The Rent Controller wrongly came to the conclusion that the raising of commercial complex in the disputed site would not come under the ambit of bona fide requirement of a religious place. The fact that the tenant is also a bad pay master and has not deposited the rent which led to the passing of order of ejectment by the Rent Controller on the ground that the arrears had only been tendered from 01.08.2005 to 31.01.2006 under protest but nothing could be shown that the arrears from 1996 as such had been paid. A defence had been taken that on account of the repair of the premises, rent was not to be paid. It was also noticed by the Rent Controller that sufficient evidence had come on record that the consent of the respondent was never there for carrying out the repair and, therefore, the tenant could not as such

adjust the arrears and there was deficiency in tendering the payment of arrears. It has not been demonstrated in any manner that even thereafter any amount was tendered from 1996 onwards to the present date even though the rent is only a paltry amount of ₹170/-.

Accordingly, keeping in view the 6th principle laid down by the Apex Court in ***Rakesh Wadhawan and others vs. M/s. Jagdamba Industrial Corporation and others, 2002 (5) SCC 440*** that the Court should look into the aspect as to whether the rent is paid regularly during the pendency of the eviction petition is also to be applied in the present facts and circumstances. Thus, it is apparent that the petitioner continues to retain the premises for the last over two decades without payment of rent.

In such circumstances, no indulgence can be granted to the petitioner in revisional jurisdiction and the findings recorded by the Appellate Authority are well justified in the facts and circumstances of the present case. Accordingly, the present revision petitions are dismissed in limine.

03.05.2017  
shivani

(G.S. SANDHAWALIA)  
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No